IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 514 (S/S) OF 2003
(Old No. 6166(SS)/1997

Girish Chandra Bhatt, atged about 33 years,
Son of Sri Madhya Nand Bhatt, resident of
Vill. & Post Panwa Naula, Distt. Almora.

……Petitioner.

Vs.

1. State of Uttaranchal through Secretary Public Works Department, Uttaranchal, Civil Secretariat, Dehradun.
2. Chief Engineer, Level-1, Public Works Department, Uttaranchal, Dehradun.
3. Chief Engineer, Kumaun Division, Public Works Department, Uttaranchal, Almora.
4. Superintending Engineer, Public Works Department, Almora. ……

…….Respondents

Mr. C.D. Bahuguna, learned counsel for the Petitioner.
Mr. Paresh Tripathi, brief holder for the respondents and S.C. for the respondent.

Hon'ble Prafulla C. Pant, J.

1. By means of this writ petition, under Article 226 of the Constitution of India, the petitioner has sought mandamus commanding the respondents to allow the petitioner to work and discharge his duties on the post of Junior Engineer/ Surveyor. Further mandamus has been sought treating the petitioner in service since 31.5.1991.

2. Brief facts of the case as narrated in the writ petition are that the petitioner passed three years Diploma in Civil Engineering from Government Polytechnic, Loha Ghat, with first Division, and joined the Public Works Department on 25.7.1985 as Surveyor engaged on daily wages. Though the petitioner was engaged as Surveyor he was assigned

work of Junior Engineer and was paid Rs. 40/- per day. From 25.7.1985 to 31.5.1995 petitioner continuously worked for at least six years as aforesaid and he was also given an experience certificate by the Public Works Department for the work done by him from 30.12.1987 to 12.11.1990. Petitioner is fully qualified for being appointed as regular Junior Engineer and is entitled for regularization of his services. IT is further alleged in the writ petition that Juniors to the petitioner are being regularized in the service while the petitioner's services were terminated without following the procedure of law. As such it is stated in the writ petition that the action on the part of the respondents is illegal and arbitrary being violative for Article 14 and 16 of the Constitution of India. On one hand the petitioner's services were terminated while on the other hand fresh candidates were engaged by the respondents, which is again discriminatory. It is also pleaded that the petitioner since had completed 240 days on continuous service in a year as such his retrenchment is violative of Section 6 N of the U.P. Industrial Disputes Act 1947. It is also submitted in the writ petition that the petitioner made representation to the concerned authority but to no avail. Referring the Writ Petitions No. 2605 (S/S) of 1991 Yogesh Srivastava Vs. State of U.P. and another and Writ Petition No. 1400 of 1991 Virendra Kumar Sonkar Vs. State of U.P. and others filed before the Lucknow Bench of Allahabad High Court, the parity has been claimed for payment of minimum pay scale to the petitioner.

3. On behalf of the respondents a counter affidavit was filed before the Lucknow Bench of Allahabad High Court where the present writ petition was originally filed (transferred to this court under Section 35 of U.P.

Reorganization Act 2000), in which it is admitted on behalf of the respondents nos. 1 to 4 that the petitioner did work from 26.9.1985 to 25.5.1991 on daily wages as Surveyor/Supervisor for which he has been paid his dues. However, it is denied that he worked continuously with the department. It is further stated in the counter affidavit that the petitioner is not entitled to regularization nor his services were terminated orally, rather the petitioner himself left the job with effect from 26.5.1991. It is only after the order dated 18.6.1996 passed in Writ Petition No. 1400 of 1991 Yogesh Srivastava Vs. State of U.P., that the petitioner has woken up and filed the writ petition to have benefit which the petitioners of the said case have received. It is also stated in the counter affidavit that the petitioner's case is not similar to that of the petitioners of above referred writ petitions, as he himself left the job at his own will and did not continue with the department unlike others. For the same reason he is also not entitled to have benefit of U.P. Industrial Disputes Act 1947. The representations made by the petitioner cannot be allowed as he has distorted the facts to get the benefit of the aforesaid judgments passed in 1996. It is categorically stated in the counters affidavit that the department never terminated services of the petitioner.

4. I heard learned counsel for the parties at length and perused the record and the case laws referred.

5. The questions for consideration before this court are (1) Whether the services of the petitioner were wrongly terminated and (2) whether in view of the judgment dated 18.6.1996 passed in Writ Petition No. 1440 of

1991 and judgment dated 28.2.1997 passed in Writ Petition 4461 of 1991 (S/S), the petitioner is entitled to regularization in service.

6. **Discussion on the question no. 1:-** Admittedly the petitioner worked as Surveyor with Public works Department from 26.06.1985 to 26.05.1991 on daily wages. The petitioner alleges that his services were terminated on 31.05.1991 while the respondent stated in their counter affidavit that he left the job of his own. Now the statements of the parties before this court are 'oath against oath' this court has to see which one is true. The last date on which the petitioner worked with respondents, is admittedly 31.5.1991 but the petitioner filed the present writ petition only on 28.10.1997, that is, after six long years. Sleep for such a long time provides to this court, reason to believe what has been stated by the respondents in their counter affidavit that it is the petitioner who himself left the job, else he would have moved the court of Labour Tribunals. Learned counsel for the petitioner drew my attention to the copies of the representations which he claims to have made during the period of six years which are annexed as annexure 4-A to 4-I. However, the copies of postal receipts (at page 36 of the writ petition) through which these were sent, it appears that the same were dispatched by registered post on 11.10.1997 i.e. just before filing the writ petition. The respondents in their counter affidavit have categorically denied having received the said representation. In the circumstances it appears to be more believable that the petitioner in fact had himself left the job after 31.05.1991 as such his services were terminated does not appear to be true. Therefore, the question that his services were illegally terminated does not arise and it

appears that only after the Writ Petition No. 1400 of 1991 (S/S) Yogesh Srivastava Vs. State of U.P. was decided on 18.6.1996 by which some employees on daily wages were benefited relating to the minimum pay scale, the petitioner has woken up to claim the parity on its basis.

7. **Discussions on question no.2:-** On question no.2 as discussed above since the petitioner himself left the job on 31.5.1991 and is not working with the department as such there is no question of regularization of his services nor can his case be said to be similar to those petitioners who filed the writ petition in the year 1991 and continued to work with the department. In my opinion for the reasons mentioned in the preceding Para the Petitioner is not entitled to regularization.

8. Learned counsel for the petitioner drew my attention to the various case laws reported in *Pradeep Kumar Singh Vs. U.P. State Sugar Corporation and another (2001) 3 UPLBEC 2571 Para 29, U.P. State Food and E.C. Corpn. Vs. K.K. Dubey 1992 LCD 147, L. Hirday Narain Vs. Income Tax Officer AIR 1971 S.C. 33 para 14 and 15, Dr. Bal Krishna Agarwal Vs. State of U.P. and others. 1995 (1) J.T. 471 para 3, Amrit Chand Tripathi and others Vs. University of Allahabad and others 1986 Allahabad Law Journal 1485 para 20 and Arvind Kumar Singh Vs. Superintendent of Police, Almora & ors. 2003 (1)ElC 331 (Uttaranchal) para 11.* I have gone through the said case laws and find that it has been held in these cases that mere availability of alternative remedy is not absolute bar to throw the writ petition as it is only a self imposed restriction on the court. I do agree with the said principle of law and this writ petition is not being thrown away on said technical ground.

9. Shri C.D. Bahuguna, learned counsel for the petitioner, also drew my attention to the principle of law laid sown in *G.P. Doval & ors. Vs. Chief Secretary, Government of U.P. & ors. AIR 1984 S.C. 1527 (Para 16) and State of U.P. Vs. Bahadur Singh & ors. 1983 ALR Page 447 S.C. para 2,* and it is argued that mere on the ground of delay, the writ petition can not be dismissed, for there is no specific limitation provided for entertaining the writ petitions. I do agree with the submissions of learned counsel for the petitioner that there is no statutory limit provided for filing the writ petition as held in aforesaid two cases but that by itself does not give license to the litigants to come to the courts after any length of time without explaining the delay. On this, my attention was drawn to the supplementary affidavit filed on 24.04.2004 before this court and it was submitted that the petitioner was pursuing the representations. In fact the said explanation should have been in the writ petition itself, which was filed in the year 1997, but it has been brought through supplementary affidavit only after the objection has been raised on behalf of the respondents. Be as the case may, this court is not dismissing the writ petition on the ground of delay. Rather, this court has gone in to the merits of the case as discussed above and found that it was the petitioner who left the job in the year 1991 and woke up in the year 1997 after coming to know of the fate of the writ petition filed by others who were continuing in service as such the aforesaid case law referred also does not help the present petitioner in this case.

10. For the reasons as discussed above this court does not find any merit in the present petition, which is liable to be dismissed. The writ petition is dismissed. No order as to costs.

(Prafulla C. Pant)

Dated: 19th March 2005.

P.Bandhavakar.